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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,759	09/25/2001	Philip R. Andersen	00088-008004	2138

26161 7590 04/12/2006

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EXAMINER

STUCKER, JEFFREY J

ART UNIT

PAPER NUMBER

1648

DATE MAILED: 04/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/963,759

Applicant(s)

ANDERSEN ET AL.

Examiner

Jeffrey Stucker

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED-STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-19,22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) 15 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14,17-19,22 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/13/02.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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The Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Examiner Jeffrey Stucker, Art Unit 1648.

This Office Action is in response to the amendment filed 3/3/06. Claims 14-19, 22, and 23 are pending, claims 15 and 16 are withdrawn from consideration. Claims 14, 17-19, 22, and 23 are under final rejection.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

The form 1449 mailed by Applicant 2/19/02 and received by the PTO 3/13/02 was apparently not previously considered. It has now been considered, initialed, and attached to the instant Office Action. The duplicate form submitted by Applicant 3/3/06 has been placed in the file.

Applicant has amended claims from the elected invention, gp130, to generic "envelope protein". The original restriction requirement stands.

The specification is still objected to because it does not comply with 37 C.F.R. 1.78. Specifically, not all of the listed application numbers are cited by series number. In addition, the "combined declaration and power of attorney" cites application 07/446,008 which is not listed on the first page of the specification. Correction is required.

The objection to claim 22 for improperly depending from canceled claims is withdrawn in view of Applicant's amendment. It is noted that claim 18 lacks antecedent basis for "[t]he method" of claim 17. In regards to claim 17, it states "any one of" claim 19.

Claims 22 and 23 are objected to under 37 CFR 1.75 as being a substantial duplicates of claims 17 and 18, respectively. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Applicant is advised that should claims 17 and 18 be found allowable, claims 22 and 23 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims

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in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

The rejection of claims 14, 17-19, 22, and 23 under 35 U.S.C. 112, second paragraph, as being indefinite is withdrawn in view of Applicant's amendment.

The rejection of claims 14, 17-19, 22, and 23 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is withdrawn in view of Applicant's amendment.

The following is a new ground of rejection necessitated by Applicant's amendment:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2),

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and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 14, 17-19, 22, and 23 are rejected under 35 U.S.C. § 102(e) as being anticipated by Pedersen et al. (5,565,319).

The instant claims are drawn to a method for detecting FIV infection comprising contacting FIV envelope polypeptide in a mixture comprising the polypeptide that reacts with envelope protein-binding antibodies in a sample and assay device comprising an isolated FIV envelope polypeptide.

Pedersen et al., with a priority date of 8/26/87, teaches in column 4, lines 13-24, a composition comprising whole virus (a "mixture comprising the polypeptide") as well as portions of the virus. The envelope protein is one of the viral proteins specifically mentioned as being of particular interest. The patent teaches in column 6, lines 53-65, that detectable signal reagents are known and reported extensively in the literature. Suitable formats for assay devices are given in this paragraph but also in the examples given in columns 9-11 and in the claims. Thus, the instantly claimed invention is anticipated by Pedersen et al.

No claims are allowed.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Papers related this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG (November 15, 1989).

The Group 1600 Official Fax number is: (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on

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access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center representative whose telephone number is (571)-272-1600.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Stucker whose telephone number is (571)-272-0911. The examiner can normally be reached Monday to Thursday from 7:00am-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (571)-272-0902.



**JEFFREY STUCKER**  
**PRIMARY EXAMINER**